

(b) The Secretary may disapprove a request at any time, even before the requester has submitted required documentation (e.g., the Secretary may determine that a requester did not meet the filing deadline, even before required documentation is submitted or reviewed).

Subpart I—Calculation and Payment of Benefits

SOURCE: 68 FR 70096, Dec. 16, 2003, unless otherwise noted.

§ 102.80 Calculation of medical benefits.

In calculating medical benefits, the Secretary will take into consideration all reasonable costs for those medical items and services that are reasonable and necessary to diagnose or treat a smallpox vaccine recipient or vaccinia contact's covered injury or its health complications, as described in § 102.31. The Secretary will consider and may rely upon benefits documentation submitted by the requester (e.g., bills, Explanation of Benefits, and cost-related documentation to support the expenses relating to the covered injury or its health complications), as required by § 102.60. The Secretary will make such payments only to the extent that such costs were not, and will not be, paid by any third-party payor and only if no third-party payor had or has an obligation to provide such services or items to the requester, except as provided in § 103.83(c) and § 103.84. There are no caps on medical benefits that may be provided under the Program.

§ 102.81 Calculation of benefits for lost employment income.

(a) *Primary calculation.* Benefits under this section may be paid for days of work lost as a result of a covered injury or its health complications if the smallpox vaccine recipient or vaccinia contact lost employment income for the lost work days. As described in § 102.32(c), days in which an individual used paid leave (including vacation and sick leave) for lost work days will not be considered days for which the individual lost employment income (unless the individual's employer restores the leave taken by putting the employee in

the same position as if he or she had not used paid leave).

(1) The Secretary will calculate the rate of benefits to be paid for the lost work days based on the smallpox vaccine recipient or vaccinia contact's gross employment income, which includes income from self-employment, at the time he or she sustained the covered injury. The Secretary may not, except with respect to injured individuals who are minors, consider projected future earnings in this calculation.

(i) For a smallpox vaccine recipient or vaccinia contact with no dependents at the time the covered injury was sustained, the benefits are 66% of the individual's gross employment income at the time the covered injury was sustained.

(ii) For a smallpox vaccine recipient or vaccinia contact with one or more dependents at the time the covered injury was sustained, the benefits are 75% of the individual's gross employment income at the time the covered injury was sustained; and

(2) In the case of a smallpox vaccine recipient or vaccinia contact who is a minor, the Secretary may consider the provisions of 5 U.S.C. 8113 (part of the statute authorizing the FECA Program), and any implementing regulations, in determining the amount of payments under this section and the circumstances under which such payments are reasonable and necessary.

(b) *Adjustment for inflation.* Benefits for lost employment income paid under the Program that represent future lost employment income will be adjusted annually to account for inflation.

(c) *Limitations on benefits paid.* The Secretary will reduce the benefits calculated under paragraphs (a) and (b) of this section, according to the limitations described in this paragraph:

(1) *Annual limitation.* The maximum amount that a requester can receive in any one year in benefits for lost employment income under this Program is \$50,000;

(2) *Lifetime limitation.* The maximum amount that a requester can receive during his or her lifetime in benefits for lost employment income under this Program is the amount of the death benefit calculated under the PSOB Program in the same fiscal year as the

year in which this lifetime cap is reached. This amount is the maximum death benefit payable to survivors under this Program using the standard calculation described in §102.82(c). However, this lifetime cap does not apply if the Secretary determines that the smallpox vaccine recipient or vaccinia contact has a covered injury (or injuries) meeting the definition of “disability” in section 216(i) of the Social Security Act, 42 U.S.C. 416(i); and

(3) *Number of lost work days.* A requester will be compensated for ten or more days of work lost if he or she lost employment income for those days as a result of the covered injury (or its health complications). If the number of days of lost employment income due to the covered injury (or its health complications) is fewer than ten, the Secretary will reduce the number of lost work days by 5 days. If the smallpox vaccine recipient or vaccinia contact lost employment income for a period of 5 days or fewer, no benefits for lost employment income will be paid. Lost work days do not need to be consecutive. Partial days of lost employment income may be aggregated to calculate the total number of lost work days. The Secretary has the discretion to consider the reasonableness of work days (or partial work days) lost as a result of a covered injury or its health complications in this calculation.

(d) *Reductions for other coverage.* From the amount of benefits calculated under paragraphs (a), (b), and (c) of this section, the Secretary will make reductions:

(1) For all payments made, or expected to be made in the future, to the requester for compensation of lost employment income or disability or retirement benefits, by any third-party payor in relation to the covered injury or its health complications, consistent with §102.32(b); and

(2) So that the total amount of benefits for lost employment income paid to a requester under this Program, together with the total amounts paid (or payable) by third-party payors, as described in paragraph (d)(1) of this section, does not exceed 66⅔% (or 75%, if the smallpox vaccine recipient or vaccinia contact had at least one dependent at the time the covered injury

was sustained) of his or her employment income at the time of the covered injury for the lost work days. If a requester receives a lump-sum payment from any third-party payor, under any obligation described in paragraph (d)(1) of this section, the Secretary will deem such a payment to be received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years; and

(e) *Termination of payments.* The Secretary will not pay benefits for lost employment income after the requester reaches the age of 65.

[68 FR 70093, Dec. 16, 2003; 69 FR 7376, Feb. 17, 2004]

§ 102.82 Calculation of death benefits.

(a) *Definitions.* For purposes of this section:

(1) *Alternative calculation* means the calculation used under paragraph (d) of this section for the death benefit available to dependents.

(2) *Deceased person* means an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact; and

(3) *Dependent* means a person whom the Internal Revenue Service would have considered the deceased person's dependent at the time the covered injury was sustained, and who is younger than the age of 18 at the time of filing the Request Form.

(4) *Standard calculation* means the calculation used under paragraph (c) of this section for the death benefit available to all eligible survivors (other than dependents who do not meet another category of eligible survivors, such as surviving eligible children).

(b) *General.* (1) If the legal guardian(s) of dependents younger than 18 years of age does not file a written selection to receive death benefits under the alternative calculation, as described in paragraph (d)(1) of this section, or if the Secretary does not approve such a selection, the Secretary will pay proportionate death benefits under the standard calculation to all of the eligible survivors with priority to receive death benefits under the standard calculation, as described in §102.11(b).

(2) If the Secretary approves a written selection to receive benefits under